

Appendix J: Inquiry by Arbitrazh Court to Constitutional Court

ARBITRAZH COURT OF BRYANSK OBLAST

[court address]

To the Constitutional Court of the Russian Federation

4 07 1996

No. 391

From the Arbitrazh Court of Bryansk Oblast in the composition of Judge Nina Sergeevna Gomanyuk, considering Case No. 263/20 on the suit of the limited liability partnership “Idos” of the city of Bryansk against the Bryansk Customs authority concerning the recognition of collection instruction No. 30 of 03/04/96 as void.

INQUIRY

**On the Verification of the Constitutionality of the First Paragraph of Article 2 of the Federal Law No. 23-FZ “On Excises,”
Adopted by the State Duma 14 February 1996 and Published in
[the newspaper of record] Rossiskaya Gazeta No. 48 (1408) of 13/03/96**

The Arbitrazh Court of Bryansk Oblast in the composition of Judge N.S. Gomanyuk is considering a case concerning the suit of the limited liability partnership (LLP) “Idos” of the city of Bryansk against the Bryansk customs authority concerning the recognition as void of collection instruction No. 30 of 03/04/96, which was presented to the LLP “Idos” by the Bryansk customs authorities concerning the automatic deduction from its account of 30,193,049 rubles in excise fees.

During the court consideration, the court established that in the exaction from the plaintiff of the stated sum, the customs authorities were guided by the Federal Law No. 23-FZ of 07/03/96 “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” [citations to original publication and amendments of the law omitted]. The named Federal Law, as stated in the court session by the respondent, allows the imposition of tax on goods originating in the countries of the Commonwealth of Independent States and brought onto the territory of the Russian Federation beginning with 1 February 1996, which follows from the first paragraph of Article 2 of the Federal law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises””, in accordance with which the named act enters into force from 1 February 1996.

The plaintiff objects to the arguments of the respondent referring to Article 57 of the Constitution of the Russian Federation, in accordance with which laws can not have retroactive force where they make the position of the taxpayer worse. Moreover, the plaintiff made a request that the [arbitrazh] court would make recourse to the Constitutional Court of the Russian Federation with an inquiry on the verification of the constitutionality of Article 2 of the Federal Law “On the Introduction of Amendments to the Law of the Russian Federation “On Excises””.

The court, having heard the arguments of the parties and having considered the request made, satisfied it, since it came to the conclusion that in the given instance there is a lack of correspondence between the provisions contained in the first paragraph of Article 2 of the Federal Law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” and Article 57 of the Constitution of the Russian Federation. The proceedings in the case were suspended in connection with this.

The position of the court consists of the following:

As a result of the adoption by the legislator of the Federal Law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” there occurred a worsening in the position of a particular group of taxpayers. In particular, the subjects of entrepreneurial activity, among whom is included the plaintiff in the case under consideration, did not in accordance with the Law of the Russian Federation “On Excises” pay excises on goods originating on the territory of the member states of the Commonwealth of Independent States and brought onto the territory of the Russian Federation until 1 February 1996. In addition, the effect of the Federal Law “On Excises” was extended by the legislator to relations [events] which existed prior to the time of its passage by the State Duma (14 February 1996), approval by the Council of the Federation (22 February 1996), signature by the President of the Russian Federation (7 March 1996) and official publication (13 March 1996).

Thus, the court considers that the Federal Law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” which is subject to application in the case under consideration possesses all of the elements that would allow the statement that it is not in accord with the provision of Article 57 of the Constitution of the Russian Federation, in accordance with which laws making the position of a taxpayer worse may not have retroactive force. In this the court proceeds from the fact that the concept of “taxpayers” used in Article 57 of the Constitution of the Russian Federation encompasses all of the subjects of the law upon which the law imposes the obligation to pay taxes. In the opinion of the court, the fact of the location of the named constitutional norm in Chapter 2 “Rights and Freedoms of the Person and the Citizen” does not restrict in the given instance the content of the concept of “taxpayers” only to individual citizens.

Moreover, in the court’s view, the failure of the law to conform to the Constitution of the Russian Federation occurred in the given instance as a result of violation by the legislator of the procedure for the entry of the law into effect. This type of failure of a

normative act to correspond to the Constitution of the Russian Federation is mentioned, in particular, in point 3 of part 1 of Article 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation.”

In connection with that set forth and proceeding from the fact that the Federal Law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” is subject to application in the case under consideration and being guided by part 4 of Article 125 of the Constitution of the Russian Federation, point 3 of part 1 of Article, point 3 of part 1 of Article 86, and Articles 101-104 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation,”

I REQUEST:

The verification of whether the first paragraph of Article 2 of the Federal Law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” is consistent with Article 57 of the Constitution of the Russian Federation.

- Attachments:**
1. Text of the inquiry in 30 copies.
 2. Official texts of the Federal Law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” in 30 copies.
 3. Determination on the acceptance of the petition of suit for proceedings and the appointment of the case for court consideration (30 copies).
 4. Record of the court session (30 copies)
 5. Determination on the suspension of proceedings in the case and recourse to the Constitutional Court of the Russian Federation with an inquiry (30 copies).